



CITY OF NEWPORT BEACH ENVIRONMENTAL QUALITY AFFAIRS COMMITTEE

AGENDA

DATE/TIME: Monday, May 17, 2004 7:00 p.m.

LOCATION: Police Department Auditorium
870 Santa Barbara Drive

Roll Call

1. Minutes of April 19, 2004 (*draft minutes attached*)
2. Report from Subcommittee on the Marinapark Resort & Community Plan Draft Environmental Impact Report (DEIR)
3. Proposed Amendments to EQAC Resolution
4. Report from Membership Subcommittee
 - a. Appointment to fill Community Association Vacancy
5. Report from EQAC Representative to GPUC
6. Report from EQAC Members on GPAC
7. Economic Development Committee (EDC) Representative's Report
8. Report on LCP process
9. Council Member Reports
10. Report from staff on current projects
11. Public Comments
12. Future Agenda Items
13. Adjournment

NEXT MEETING DATE: June 21, 2004

LOCATION: Police Department Auditorium

*Draft attachments can be found on the City's website <http://www.city.newport-beach.ca.us>, once there, click on City Council, then scroll to and click on Agendas and Minutes then scroll to and click on Environmental Quality Affairs. If attachment is not on the web page, it is also available in the City of Newport Beach Planning Department, 3300 Newport Boulevard, Building C, 2nd Floor.



CITY OF NEWPORT BEACH ENVIRONMENTAL QUALITY AFFAIRS COMMITTEE

Minutes 04-19-04

DRAFT

Minutes of the Environmental Quality Affairs Citizens Advisory Committee held at the City of Newport Beach Police Department Auditorium, 870 Santa Barbara Drive, on April 19, 2004.

Members Present

Robert Hawkins, Chairperson
Cris Trapp, Vice Chairperson
Richard Nichols, Council Member
Barry Allen
Brent Cooper
Laura Dietz
Thomas Eastmond
Ray Halowski
Barry Allen

Brent Cooper
Laura Dietz
Kenneth Drellishak
Sandra Haskell
Carol Hoffman
Phillip Lugar
Dolores Otting
Richard Rivett
Merritt Van Sant

Staff Present

Patricia Temple, Planning Director
Niki Kallikounis, Planning Dept. Asst.

James Campbell, Senior Planner

Guests Present

Walter Lazicki

Phillip Bettencourt, Representing St. Andrews

Kristine Adams

Ron Hendrickson, Representing St. Andrews Building Committee

Members not present

Steven Bromberg, Council Member
Gus Chabre
Maggie Fitzgerald
Tom Hyans – Excused Absence

Louis Von Dyl – Excused Absence
Christopher Welsh
Jennifer Winn – Excused Absence

The meeting was called to order at 7:00 p.m.

Chairperson Hawkins welcomed new member Merritt Van Sant and potential member Kristine Adams.

1. Minutes of March 15, 2004

Motion: Carol Hoffman moved to approve minutes with recommended changes:

Seconded: Laura Dietz.

Motion passes unanimously.

2. Applicant Presentation on the St. Andrews Presbyterian Church Project, and Report on Draft Environmental Impact Report (DEIR) from the subcommittee

Phillip Bettencourt, representing St. Andrews, explained the resource materials that he brought to the meeting. Mr. Bettencourt said that they have had an opportunity to review EQAC's draft comments.

Discussion of and changes to the subcommittee report ensued.

Motion: Carol Hoffman to approve the report with all of the amendments:

Seconded: Cris Trapp.

Motion passes. 1 No vote.

3. Report on Supplemental Draft Environmental Impact Report (SDEIR) for the Irvine Business Complex, Central Park Project

Discussion of and changes to the subcommittee report ensued.

Motion: Dolores Otting to accept the report as amended:

Seconded: Barry Allen Seconded.

Motion passes unanimously.

4. Report from Membership Subcommittee

- a. Proposed Revisions to EQAC Resolution

Discussion ensued and proposed changes were made to the resolution.

Motion: Dolores Otting to accept the proposed changes and forward to Council with recommendation that the Resolution be revised as proposed:

Seconded: Carol Hoffman

Motion passes unanimously.

5. Report from EQAC Representative to GPUC

Chairman Hawkins reported on the April 12 meeting.

6. Report from EQAC Members on GPAC

Ms. Temple reported on the April 12 meeting.

7. Economic Development Committee (EDC) Representative's Report

None

8. Report on Local Coastal Program (LCP) Process

Ms. Temple reported that the LCP would be heard at the Planning Commission on April 22 and from there go to the City Council.

9. Council Member Reports

Council Member Nichols reported that the relinquishment of West Coast Highway was discussed at the March 23 City Council meeting and the State's offer was accepted.

Council Member Nichols also commented that studies are being conducted in both Morning Canyon and Buck Gully.

10. Report from Staff on current projects

Ms. Temple noted that they expect to publish the Marina Park Draft Environmental Impact Report in five to ten days and St. Mark's within ten to fourteen days and both will be on the May agenda.

11. Public Comments

None

12. Future Agenda Items

- Marina Park Draft Environmental Impact Report (DEIR)
- St. Mark Presbyterian Church DEIR – Ryan Dwight volunteered to serve on the Subcommittee

13. Chairperson Hawkins adjourned the meeting at 9:00 p.m.

MEMORANDUM

To: Environmental Quality Affairs Citizens Advisory Committee ("EQAC")
City of Newport Beach

From: EQAC Marinapark Sub-committee

Subject: **The City of Newport Beach's Draft Environmental Impact Report ("DEIR")
for the implementation and development of the Marinapark Resort and
Community Plan (the "Project")**

Date: May 12, 2004

Thank you for the opportunity to provide these comments on the captioned DEIR for the Project.

I. A Brief Summary of Our Concerns.

We recommend that the City reconsider and revise the DEIR and/or respond to the following concerns during the public review process for the DEIR. Because of the concerns listed below, we believe that the City should revise the document and re-circulate the revised document for public review and comment.

We make these recommendations for several reasons:

- (1) The DEIR fails to describe the Project fully and accurately, thereby undercutting the public's and decision maker's ability to understand the Project, determine impacts of the Project and evaluate mitigation measures.
- (2) The DEIR fails to recognize and analyze potentially significant impacts discussed in the Initial Study/Notice of Preparation for the DEIR including impacts regarding hazards and hazardous materials, and recreation.
- (3) The DEIR fails to discuss and analyze all Project related impacts including those associated with Transportation/Circulation, Land Use, Hydrology and Water Quality and other issues, as well as cumulative impacts for all issues analyzed.
- (4) The DEIR fails to analyze fully the growth inducing impacts of the Project and/or provide mitigation for such impacts.
- (5) The DEIR fails to analyze and discuss fully the Project alternatives and assess objectively the environmentally superior alternative.

II. Introduction: EIR Standards.

An EIR constitutes the heart of CEQA: An EIR is the primary environmental document which:

“... serves as a public disclosure document explaining the effects of the proposed project on the environment, alternatives to the project, and ways to minimize adverse effects and to increase beneficial effects.”

CEQA Guidelines section 15149(b). See California Public Resources Code section 21003(b) (requiring that the document must disclose impacts and mitigation so that the document will be meaningful and useful to the public and decision makers.)

Further, CEQA Guidelines section 15151 sets forth the adequacy standards for an EIR:

“An EIR should be prepared with a sufficient degree of analysis to provide decision-makers with information which enables them to make a decision which takes account of the environmental consequences. An evaluation of the environmental effects of a proposed project need not be exhaustive, but sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible. Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts. The courts have looked not for perfection but for adequacy, completeness, and a good faith attempt at full disclosure.”

Further, “the EIR must contain **facts and analysis**, not just the agency's bare conclusions or opinions.” Concerned Citizens of Costa Mesa, Inc. v. 32nd District Agricultural Association, (1986) 42 Cal. 3d 929 (Emphasis supplied.).

In addition, an EIR must specifically address the environmental effects and mitigation of the Project. But “[t]he degree of specificity required in an EIR will correspond to the degree of specificity involved in the underlying activity which is described in the EIR.” CEQA Guidelines section 15146. The analysis in an EIR must be specific enough to further informed decision making and public participation. The EIR must produce sufficient information and analysis to understand the environmental impacts of the proposed project and to permit a reasonable choice of alternatives so far as environmental aspects are concerned. See Laurel Heights Improvement Association v. Regents of the University of California (1988) 47 Cal. 3d 376.

Also, to the extent that an EIR proposes mitigation measures, it must provide specific measures. It cannot defer such measures until some future date or event. “By deferring environmental assessment to a future date, the conditions run counter to that policy of CEQA which requires environmental review at the earliest feasible stage in the planning process.” Sundstrom v. County of Mendocino (1988) 202 Cal. App. 3d 296, 308. See Bozung v. Local Agency Formation Com. (1975) 13 Cal.3d 263, 282 (holding that “the principle that the environmental impact should

be assessed as early as possible in government planning.”); Mount Sutro Defense Committee v. Regents of University of California (1978) 77 Cal. App. 3d 20, 34 (noting that environmental problems should be considered at a point in the planning process “where genuine flexibility remains”). CEQA requires more than a promise of mitigation of significant impacts: mitigation measures must really minimize an identified impact.

II. **Section 1. Introduction and “Effects Found Not to be Significant (Section 1.6).**

The Introduction discusses general CEQA issues, formatting of the DEIR, the IS/NOP, the scoping process and effects found not to be significant. The latter– “Effects Found Not to be Significant”– raises substantive concerns.

Section 1.6 notes that, during the scoping process, various impacts were found to be potentially significant, whereas others were found not to be significant. These latter include “Hazards and Hazardous Materials,” and “Recreation.” For various reasons discussed below, these are potentially significant impacts: the DEIR should include a detailed discussion and analysis of such impacts, and propose necessary mitigation.

A. “Hazards and Hazardous Materials.”

Appendix A of the DEIR includes the Initial Study, Environmental Checklist and the Discussion of Environmental Evaluation. The Checklist Item No. VII addresses Hazards and Hazardous Materials. Item No. VII b) indicates that it is less than significant that the Project would create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials. However, Item No. VII c) indicates that the Project may have a potentially significant impact by emitting hazardous emissions or handling hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing school. Item No. VII d) indicates that the Project may have a potentially significant impact unless mitigated in that the Project is located on a site which is included on a list of hazardous materials sites and as a result would create a significant hazard to the public or the environment.

The Discussion of these Items is helpful. Under Item No. VII b), the Discussion notes that, because of the presence of motorized construction equipment, there is a small risk of gasoline or diesel spillage. However, the Discussion concludes that such is less than significant.

Under Item No. VII c), the Discussion notes that the Project is within one-quarter mile of Newport Elementary School. It states that an inventory of materials and quantities used in construction and operation of the Project will be created. If necessary, any hazardous materials will be identified and mitigation measures proposed.

As for Item No. VII d), the Discussion explains that past or present on-site and off-site uses have the potential to result in the release of toxic substances.

"[P]roject implementation will require the removal of onsite structures, which depending on date of construction may contain lead or asbestos materials. A **regulatory database review will be conducted for the proposed project, results of the database review will be summarized in the EIR and the review results included in their entirety as an appendix to the document.** Mitigation measures will be recommended as appropriate."

The DEIR does not address the IS/NOP analysis. Instead, the DEIR concludes that the Project's impacts on hazards and hazardous materials are insignificant. For gasoline or diesel spillage, the DEIR includes a similar analysis as the IS/NOP: the risk is less than significant.

For proximity to schools including Newport Elementary, the DEIR is silent. As discussed below, it refers to a (Limited) Phase II Soils Assessment but concludes no significant impact.

The Phase II assessment is not attached as an appendix. The DEIR notes that the analysis identified small concentrations of trace petroleum hydrocarbons, metals and organochlorine pesticide in and around portions of the Project site. Submarine sediment samples indicated low concentrations of various but unidentified hydrocarbons.

The DEIR fails to keep the promise of the IS/NOP: the DEIR includes no "regulatory database review and summary." Moreover, it fails to include the Phase II study or make such available for public review. Incidentally, the DEIR states that such contaminants are below action levels; yet it provides no indication as to what those action levels are. Given the promise of the IS/NOP, the DEIR should be revised to include items discussed above, and the revised DEIR should include a thorough analysis of all such impacts.

Moreover, the conclusions of the Phase II study seems implausible. The Project's location is near the mouth of the Rhein Channel which we understand is regarded as highly polluted. Although the IS/NOP appeared to recognize this challenge, the DEIR fails to consider and analyze the Project's impacts including destruction and removal of existing docks and structures, construction and installation of new docks and structures, and other Project related activities on submarine sediment in and around this problematic water body.

In addition, we understand that Chevron or another company had a storage facility near the Project site in the past. The DEIR should include an analysis and/or study of any emissions from the storage site and any Project related impacts arising from disturbance and/or release of any hazardous materials from such site or contamination from such site as a result of the construction and operation of the Project.

Also, as discussed below, notwithstanding the DEIR's conclusion that the Project will have no significant impact on hazards and hazardous materials, the DEIR discusses the Project's hazards and hazardous materials impacts in relation to biological resources. The DEIR's analysis of hazards in relation to biological resources undercuts the DEIR's conclusions that Project's impacts on hazards and hazardous materials are insignificant.

B. Recreation.

The DEIR also regards the Project's impacts on recreational opportunities as insignificant. However, Project features and configuration themselves require environmental analysis in order to make such conclusion. The Project "will replace all recreational facilities except the basketball half-court." DEIR, 1-6. This raises several problems.

At the outset, the demolition and replacement of existing facilities will have short-term construction impacts on all of these recreational opportunities. Without more analysis and discussion, such impacts appear to be significant, at least in the short term. Further, the replacement of such facilities is problematic: without further analysis and perhaps mitigation, it is unclear that the replaced facilities will provide access and have features similar to the existing facilities.

Further, the elimination of the half-court basketball facility requires further analysis and discussion. This resource appears to be unique: its configuration and alignment may make it more popular than full court facilities in the area.

Also, the Project's resort proposes joint use of the recreational facilities. Without more analysis, such use may significantly and adversely affect residents' use of the Project facilities.

Finally, a crucial Project alternative is a recreation alternative. In order to assess, analyze and evaluate the alternatives, the DEIR should include an analysis of the Project's impacts on recreational opportunities.

C. Conclusion.

The DEIR should be revised to include a full environmental analysis of the Project's impacts on hazards and hazardous materials, and recreation.

III. Section 2: Executive Summary.

The Executive Summary attempts to summarize the Project Description (discussed below), the areas of controversy/issues to be resolved, and a summary of impacts and mitigation.

Section 2.2 addresses areas of controversy/issues to be resolved. It notes:

"The area of controversy associated with the proposed project is the intensification of land uses on the project site. The location of the tideland boundary is an issue that is to be resolved."

Both of these are problematic. As to the area of controversy, "intensification of land use" improperly simplifies the issues: the area of controversy is the replacement of the current marine use with a highly commercial use which requires a General Plan Amendment and other approvals.

The DEIR's statement about the issue to be resolved--tideland boundary-- is surprising. The DEIR should resolve this issue in its analysis of the existing site. The DEIR's failure to resolve this issue undercuts its usefulness. Moreover, Section 3.4 indicates that, among other permits, the Project will require a lease of tidelands. In order for the public and decision makers to understand the Project's impacts on tideland boundaries and the impacts of this lease, the DEIR should include a detailed discussion of the tidelands location, and the nature and extent of such lease. Without resolving this issue in the DEIR, the document cannot fulfill its own requirements.

Section 2.5 includes a table which identifies Project impacts and mitigation. For a discussion of Project impacts, see our discussion below. However, as to mitigation, Table 2-1 raises a general problem: deferral of mitigation measures. As indicated above, CEQA requires environmental review at the earliest feasible stage in the planning process. For each mitigation measure identified in Table 2-1, each measure is deferred to some future event or permit issuance. In order to understand the nature and extent of mitigation and to assess whether the proposed mitigation fully and adequately addresses the impact, the DEIR should fully identify and discuss all mitigation measures, discuss how such measures will lessen impacts to a level of insignificance, and if necessary, provide alternative mitigation measures for any measure which does not fully mitigate identified impacts.

IV. Section 3: The Project Description.

Section 3.1.1 discusses Site Characteristics. Among other things, the DEIR notes that the Project site is bound by "a public beach and Newport Bay to the north." Although Section 3.1.1 discusses many of the current site characteristics, it fails to discuss the location and character of the tidelands issue. This issue may affect the Project, the analysis of the Project impacts, the alternatives analysis and related matters. The DEIR should include a full discussion of the tidelands boundary issue, resolve the issue, locate the boundary, and discuss all Project related impacts.

Among other features, the Project includes twelve (12) new boat slips and replacement of public tennis courts on the deck of the proposed parking structure. As to the boat slips, the DEIR states that this feature will require dredging of approximately 1,250 to 1,750 cubic yards of bay sediment to create the boat basin; this "clean sand" will be placed on shore side of a proposed Project related bulkhead. This raises several issues.

The Project apparently will replace the American Legion Marina with a similar number (46) of slips. However, the DEIR fails to discuss the relation of the American Legion slips to the Project feature slips.

Also, the IS/NOP and the DEIR recognizes that the Project may affect hazards and hazardous materials. As discussed above, these two documents are inconsistent in their assessment of the Project's impacts on hazards. However, given that the Project requires removal and relocation of 1,250 to 1,750 cubic yards of bay sediment, the DEIR should fully address the character of this sediment, analyze any impact to hazards and hazardous materials, and, if necessary, provide mitigation.

Further, it is unclear where this excavation will occur especially in relation to the tidelands boundary. As noted above, the DEIR fails to discuss the tidelands location. The DEIR should provide a clear description of the location of this excavation in relation to the tidelands, and if necessary, provide adequate mitigation.

Regarding the tennis court, the Project description notes their location but fails to address public access to this Project feature. Indeed, the Project description fails to discuss all sorts of public access issues. How does the public gain access to the beach? Does the beach remain a public beach? What are the public access features for all Project related structures including the community center, tot lot, and parking?

Also, the Project is entitled the "Marinapark Resort & Community Plan." The Project description includes no reference to the "Community Plan." The revised DEIR should fully explain the Project including the "Community Plan."

Incidentally, the Project description includes some internal inconsistencies which require explanation and resolution: First, exhibit 3-3, Site Plan, shows the Girl Scout House and the Spa Villa to be 4,166 square feet each; however Table 3.2-1 on the next page states that the Girl Scout House/Community Center and the Spa Villa will be 6,191. Second, the Site Plan shows shared parking at the corner of 18th Street and Balboa Boulevard, but further in the document, in the Aesthetics section, the computer-generated visual simulations shows two-story villas at this corner.

Section 3.3 discusses Project Objectives. These Objectives include several economic/commercial objectives:

- "Complement efforts to revitalize Balboa Village and enhance other commercial areas on the Peninsula;
- Provide additional general fund revenue that will help the City maintain or enhance the high level of public safety and municipal services provided to Newport Beach residents.
- Enhance public access and community facilities on the site without any expenditure of tax revenue and without any fiscal impact on the Girl Scouts and other users."

DEIR, 3-8.

The DEIR includes no detailed discussion of these and other objectives. However, it is unclear that such objectives are appropriate for the Project site and the current environmental analysis. The only Project Alternative in the DEIR which meets these economic objectives is the Project. Given these economic objectives, the DEIR should include an economic analysis which shows how and why the Project meets these and other objectives, provides a detailed discussion of City revenues from the Project including lease payments, taxes and other sources of revenue, and other economic considerations appropriate.

Section 3.4 addresses "Intended Uses" of the DEIR. The section identifies various discretionary approvals by the City. It notes:

"Other actions necessary to implement the project are identified later in the section under 'Other Discretionary and Ministerial Actions.'"

DEIR, 3-9. However, the DEIR contains no such section. The DEIR should be revised to include a full list of all discretionary approvals by all agencies.

Finally, the DEIR contains a huge hole regarding permitting and approvals: the election requirement. We understand that the City proposes to submit this Project to the voters. The DEIR should discuss this requirement, and explain its relation to the CEQA process and Project approval.

V. Section 4: General Description of Environmental Setting.

Section 4.1 addresses the environmental setting. As indicated above, nothing in the DEIR locates the tidelands boundary. These section should be revised to include a discussion and, perhaps, a map of such boundary.

Section 4.2 discusses related projects. It notes that the City provided several related projects; presumably, Table 4-1 is the list provided. However, it is incomplete. First, as indicated in the Project objectives, DEIR recognizes that in the Project vicinity, the City and others are engaged in "efforts to revitalize Balboa Village and enhance other commercial areas on the Peninsula." These efforts are related projects and should be included in the cumulative impacts list.

Among other efforts, several plans to develop live/work projects in and around the Project vicinity. Likewise, these plans should be included in the cumulative impacts list.

VI. Section 5: Project Impacts, Mitigation Measures, and Level of Significance After Mitigation.

A. Section 5.1: Geology and Soils.

Section 5.1 address geotechnical impacts of the Project. The DEIR includes a geotechnical report for the site. Among other things, the DEIR notes that

"[l]iquefaction occurs when shallow, fine to medium-grained sediments saturated with water are subjected to strong seismic shaking. Liquefaction usually occurs when the underlying water table is 50 feet or less below the surface."

DEIR, 5.1-2. Also, the DEIR notes that expansive soils are those which can give up or take on water. Id.

The DEIR notes that, although the onsite soils are not expansive, "[t]he potential for liquefaction during a major seismic event is considered to be high." As noted above, liquefaction

may depend on depth to groundwater. The DEIR should state depth to groundwater at the site, discuss the soils character, explain why, though the sands will hold water, they are not expansive and related issues.

Moreover, Section 5.1.4 considers two mitigation measures. As before, this section fails to discuss depth to groundwater. The two mitigation measures depend upon permit issuance: the first depends upon issuance of a grading permit and concerns aspects of the grading plans. However, it fails to state the depth if any of such grading. The second depends upon issuance of a building permit and concerns slab alternatives. However, the section fails to determine which slab type will be employed.

B. Section 5.2: Hydrology and Water Quality.

Section 5.2 concerns hydrology and water quality. This section notes that the Project will have short-term construction impacts on water quality and hydrology, long term operational impacts and cumulative impacts. Construction impacts include soils erosion, trash and debris which may leave the Project site. In addition, construction activities in connection with the marina will include re-introduction of contaminants through construction activities which may "resuspend" bottom sediment as well as increase in turbidity.

Long term operational impacts include increased flow concentrations at a majority of Project related storm drains with a decrease in several such drains. In addition, the Project will increase peak flows during 100-year storm events along 18th and 15th Streets while flows along Balboa Boulevard would decrease somewhat.

Water quality impacts of the Project include trash, debris, oil and grease, and other pollutants including heavy metals, oxygen demanding substances, nutrients and organic compounds. Further, installation of a cement walkway from the resort to the marina will interrupt tidal flows and water circulation, and may create stagnant water conditions.

Finally, the DEIR recognizes that the Project "will substantially contribute to a potential significant cumulative impact on existing storm drain systems." It will "also increase urban pollutants that would substantially contribute to a potential significant cumulative impact on surface water quality."

The DEIR includes five mitigation measures. Most of these mitigation measures defer mitigation measures until issuance of grading permits.

This analysis and mitigation is problematic for several reasons. The impacts analysis fails to discuss current drainage and percolation, as well as the proposed drainage and percolation of the Project.

Also, the DEIR fails to consider several potential mitigation measures. Increasing pervious surfaces may limit surface water run-off. Indeed, Section 7, the Alternatives Analysis, states that the Project is superior to the Marine Alternative due to its increase of pervious surfaces. Yet the

DEIR fails to discuss this issue, analyze the nature and extent of such surfaces, and, if necessary, propose mitigation.

In addition, the Project together with other revitalization efforts may significantly affect the storm drain capacity. Yet, the DEIR does not consider whether the Project may require re-sizing of storm drains in the vicinity.

Also, none of the mitigation measures address the Project's cumulative impacts on hydrology and water quality. Mitigation of such impacts could include establishment of stormwater mitigation program for a comprehensive upgrade of the storm drains on the Peninsula.

Further, as indicated above, such deferral of specific mitigation measures does not comply with the requirements of CEQA which requires full discussion of all impacts and mitigation. Deferral of the development of various mitigation measures until some permitting or pursuant to various regulatory bodies including the City and/or the Regional Water Quality Control Board is not informative: precise Project features and mitigation are deferred until after the public and decision makers have had an opportunity to review, comment and in the case of decision makers, decide on the DEIR and the Project. The DEIR should be revised to discuss fully all water quality and hydrology impacts, and provide specific and enforceable mitigation measures to lessen any such impacts.

C. Section 5.3: Biological Resources.

Section 5.3 concerns the Project's potential impacts on biological resources. Section 5.3.1 addresses existing conditions including sediments and habitats and marine biological communities near the Project. As indicated above, the DEIR includes no detailed discussion of hazards and hazardous materials. Section 5.3.1 repeats the earlier discussion regarding low levels of pollutants. Further, in discussing sub-tidal bay floor sediments, the DEIR states that environmental site assessment indicates the presence of low concentrations of petroleum hydrocarbons in the **upper one-half foot of the bay mud.**

This is inadequate: as indicated above, the Project will require excavation of between 1,250 to 1,750 cubic yards of "bay mud." Testing on the upper one-half foot fails to test the full extent of this excavation.

The DEIR should be revised to include a full analysis of hazards and hazardous materials so that the entire environmental analysis of the Project's impacts including hazards and hazardous materials and biological resources.

Also as indicated above, the analysis indicates that contaminants including those in sub-tidal bay sediments are below action levels for soils on land but fails to provide the action levels. The revised DEIR should provide this information, or indicate that they are the same as those for soils on land.

In addition, in connection with the existing conditions regarding bay fishes, the DEIR relies on a otter trawl net sampling of fish species known to occur in Newport Bay that was conducted for eighteen (18) months between 1974 and 1975. This sampling would seem to be too out-of-date to be of any value in assessing the number of species in the Bay and the proposed Project's potential impact on those fish species. The DEIR should be revised to include a more recent sampling or more recent information on the fish species known to occur in Newport Bay and consider the Project's impacts on identified species. Also, if for some reason the thirty year old study remains useful, the revised DEIR should explain the utility of this thirty year old study and alternatives.

In assessing the Project's impacts on shoreline habitats and resources, the DEIR states that "(t)he proposed cement walkway from the resort hotel to the boat slips will result in the loss of approximately 490 square feet of sandy shoreline which is foraging habitat for shorebirds. This long-term loss is considered significant." Page 5.3-7 Since the site currently has an existing concrete walkway, it is unclear how the new walkway will have this kind of impact. Based on the conclusion that there will be this significant impact, it appears that the Project walkway must differ from the existing walkway, e.g. project out further into the shoreline. This is not clear from the Project Description or anywhere else in the DEIR.

Further, the DEIR is inconsistent in discussing this impact. As stated above, on Page 5.3-7, the DEIR characterizes the loss of foraging habitat for shorebirds as significant. However, on Page 5.3-9, the DEIR states: "No direct mortality of shorebirds and seabirds will occur. The long-term presence of the boat slips, bulkhead and concrete walkway will however, reduce shorebird and seabird resting and foraging habitat, however, this is not considered a significant impact." An accurate assessment of the impacts to birds should be provided in the Final EIR, and this inconsistency should be corrected.

The DEIR contains another and important inconsistency. Section 5.3.3 recognizes that Project construction will have an impact on benthic communities in the Project area. However, Section 5.3.3 concludes that "[t]he loss of benthic infauna and epifauna due to dredging will be a short-term less than significant impact." This conclusion is problematic: dredging will continue through the life of the Project. Thus, such impact may be more than short term.

Moreover, Section 5.3.6 states that, regarding biological resources, "[w]ith the implementation of the above mitigation measures, only one significant unavoidable adverse impact would remain." DEIR, 5.3-13.

"This impact would occur during the short-term and would be on the benthic resources that would be removed from the bayfloor during project and maintenance dredging activities."

Id. However, Section 6.1 concludes that there are no significant and unavoidable impacts. The DEIR should be revised to resolve this inconsistency: either the impact on benthic resources is significant or not. Moreover, such impacts will be more than long terms: impacts on benthic resources will occur during Project construction as well as maintenance dredging.

Also, as indicated above, all Biological Resources Mitigation Measures are deferred until the issuance of either a grading permit or a permit from a resource agency. This deferral of mitigation is not permissible under CEQA.

In addition, most of the Mitigation Measures list various regulatory plans, e.g. stormwater pollution prevention plan ("SWPPP") which describes best management practices ("BMPs"). However, the analysis is incomplete and generic; all of these Mitigation Measures appear to be boilerplate, with no direct reference to the impacts to biological resources present at the proposed Project site or the actual mitigation proposed. The DEIR should include an appropriate expert analysis to discuss Project specific impacts and mitigation as well as to develop the various regulatory plans. The discussion of mitigation measures in this section seems more appropriate for a program level analysis. The Final EIR should more fully discuss the impacts and mitigation proposed.

D. Section 5.4: Land Use and Planning.

Section 5.4 addresses the proposed Project's consistency with various elements of the General Plan. Section 5.4.1 describes existing conditions including the Land Use Element of the General Plan which provides regarding the Project site:

"The existing mobile home park use will be allowed to continue until the end of the existing lease. At that time the City will make the decision as to whether the lease should be further extended, or the property converted to public use."

DEIR, 5.4-4. The DEIR then states that this description "indicates that the existing mobile home park is not consistent with the existing land use designation for the site." Id.

However, in Section 5.4.3 which addresses Project impacts, the DEIR fails to discuss and analyze the Project's consistency with this requirement of conversion "to public use" at the end of the existing lease.

Also, this section indicates that the Project will not divide the community, because "[a]ccess to and through the project site is maintained." DEIR, 5.4-8. However, as indicated above, public access to and through the Project is unclear. Moreover, as discussed in Section 5.7, Noise, the Project will serve as a sound barrier which will block vehicular noise from Balboa Blvd. to the Project. If the Project serves as such a barrier, it likely will divide the community. The DEIR should be revised to show the access points and routes from Balboa Blvd. through the Project to the Bay.

In addition, Section 5.4.3 discusses the Land Use Element, Policy C which provides:

"Commercial, recreation or destination visitor serving facilities in and around the harbor shall be controlled and regulated to **minimize congestion and parking shortages**, to ensure access to the water for residents and visitors, as well as

maintain the high quality of life and the unique and beautiful residential areas that border the harbor.”

DEIR, 5.4.9. Emphasis added. However, the DEIR’s discussion of parking requirements shows that, although the Project will provide a total of 209 surface and subterranean parking spaces, the Project demand is only **92 spaces** under the current Code requirements; the Project will result in a total of 117 excess parking spaces.

This raises a few problems or questions. First, the code requirements appear at odds with Policy C’s requirements. Moreover, the Code requirements are skimpy by half: one space for every two rooms; one space for 300 square feet of the proposed Community Center and Girl Scout House; and four spaces for the four tennis courts. Likely, each visitor enjoying a Project/resort room will require one parking space; likely, each individual using the tennis courts will require parking. The DEIR should include a further study regarding the parking demand of the Project to ensure that Policy C of the Land Use Element is met.

In our earlier comments on the NOP for the proposed Project, we noted that the Project Description failed to discuss employee, contractor and supplier parking and access. The DEIR also fails to discuss how parking and access will be provided within the proposed Project for these groups. The Section goes on to say that the proposed Project will provide 117 parking spaces beyond what is required by the code. Perhaps these “excess” parking spaces are intended to accommodate employees, contractors and suppliers, but this issue is not addressed in the DEIR. The DEIR should be revised to address the issue of parking for these groups, because parking on the Peninsula is such an important issue.

As indicated here and below, Section 5.4 addresses the Project’s parking demands and Section 5.5, Transportation/Circulation includes no parking analysis. This confusion creates another problem. Although Section 5.4 discusses the Project’s parking requirements, it fails to discuss existing parking including street parking. We believe that the Project will result in a loss of parking spaces from current levels. This loss must be counted against the excess parking spaces. The DEIR should be revised to include a thorough parking analysis under Section 5.6 and, if necessary, propose adequate mitigation.

As indicated above, the DEIR has eliminated Recreation from the environmental issues to be addressed, even though Recreation had been included in the NOP. The DEIR states that the half court basketball court doesn’t get much use, according to City’s recreation staff, and therefore, will not be replaced. Page 5.4-12 However, residents of the Peninsula do, in fact, use the court. Because the court is protected from the wind by its location on the Bay side of the Peninsula and between the tennis courts, it is preferred over the full court located on the ocean side at the elementary school. In fact, the City has recently completed some repairs to the court, presumably because it is used. The Final EIR should address this impact and provide necessary mitigation.

Further, the DEIR states that the proposed Project would replace the four tennis courts with the same number of courts, but the hotel would offer tennis lessons on the courts. How will this

impact the current heavy use of the tennis courts? The Final EIR should include a Recreation section, which analyzes these proposed Project's impacts and provide necessary mitigation.

Further, Section 5.4.1 and following sections include a discussion of the Recreation and Open Space Element of the General Plan stating that it has "been determined to be applicable to the proposed project ..." In fact, the DEIR states that "(t)he project site is designated Recreation and Environmental Open Space." DEIR, 5..4-3.

One of the objectives of the Recreation and Open Space Element is to "[m]aintain and enhance the scenic character of the City." The policy which supports this objective seeks to "protect and enhance existing view opportunities, especially public views of the ocean, harbor, and upper bay" Section 5.4.3 states that the Project would provide view corridors from Balboa Boulevard to the Bay; and therefore, the proposed Project is consistent with the objective of the Recreation and Open Space Element. However, the views from Balboa Boulevard through the majority of the proposed Project site will be obstructed by 24-foot, 27-foot or 34-foot buildings which will act as a sound barrier. The Final EIR should analyze this impact more realistically and provide necessary mitigation.

Finally, the DEIR states that, because the Project is compatible with surrounding land uses and consistent with the General Plan and the Local Coastal Program, Land Use Plan, the Project will not have any cumulative land use impacts. However, the Project requires discretionary actions, e.g. amendments, regarding the City's General Plan and Local Coastal Program, Land Use Plan as well as a Coastal Development Permit. As discussed above, the Project together with other projects listed in Table 4-1 as well as the efforts to revitalize the Peninsula may create significant cumulative impacts in connection with land use. The DEIR should be revised to discuss and address such cumulative impacts.

Incidentally, the DEIR offers inconsistent building setback requirements on 18th Street. In the discussion relating to land use compatibility, the DEIR states that "(t)he structures proposed along the 18th Street will have a setback of 14 to 17 feet. Page 5.4-8 However, the Aesthetics Section lists a building setback for 18th Street as 5 feet. This inconsistency should be corrected in the Final EIR.

E. Section 5.5: Transportation/Circulation.

Section 5.5 addresses transportation and circulation. This analysis is supported by a special traffic study, Appendix E: Marinapark Resort and Community Plan TPO: Traffic Analysis. This analysis focuses on 7 intersections during weekdays of the "shoulder season," fall and spring when schools are in session. The intersection closest to the proposed project is Newport Blvd. and 32nd St. Sections 5.5.5 concludes that the Project will have no significant transportation and circulation impacts; Section 5.5.6 concludes that therefore no mitigation measures are needed.

However, Table A-1 to Appendix E recognizes what every summer visitor to the Peninsula and full-time resident knows: the summer weekend traffic in the vicinity of Balboa Blvd. and 20th

St. is already at LOS E or worse which exceeds the City's standard of acceptable service, LOS D. Although the Project traffic may not exceed the 1 % increase threshold, it likely will contribute to the existing traffic problem. Moreover, as indicated above, the Project together with other projects identified in Table 4-1 as well as the revitalization efforts on the Peninsula likely will have cumulative impacts which require mitigation. The City may wish to consider improved traffic flow measures in this area to include, for example, limited on-street parking, better turn-out lanes and improved traffic signal timing/synchronization.

In our comments on the IS/NOP for the Project, we requested that the DEIR "analyze and, if necessary, propose mitigation for Project impacts on seasonal traffic problems". It further requests that the DEIR "discuss and analyze the Projects design and impact on the intersections at 15th, 16th, 17th and 18th streets with Balboa Blvd.". The DEIR did not take the suggestion and none of these intersections were addressed. The DEIR should be revised to address these intersections, provide an environmental analysis of the Project's impacts on transportation in the vicinity, and, if necessary, propose mitigation.

Further, traffic associated with Resort employee, construction and service vehicles is not mentioned in the DEIR. Are there plans to schedule deliveries and plan for off-site employee parking to minimize traffic impacts?

Correlatively, the DEIR does not address traffic access and internal circulation at the site. As indicated above, the DEIR states that the Project will not have significant impacts on vehicular access and, by implication, no impacts on internal circulation. Yet, the document is silent on these issues. The DEIR should be revised to address and consider vehicular access and internal circulation, identify any Project related impacts, and propose necessary mitigation.

Also, the Project may have short-term impacts on transportation and circulation. Section 5.6 suggests that the Project will require a construction traffic management plan. Yet, Section 5.5 contains no analysis of the short-term construction impacts of the Project on transportation and circulation. The DEIR should be revised to include an analysis of the short term construction impacts on traffic and circulation, discuss the construction traffic management plan, and, if necessary, propose adequate mitigation.

Finally, as discussed briefly above, the DEIR attempts to address parking demands in connection with the Land Use analysis which discusses code requirements for the Project. However, the DEIR should include an actual study on the parking demands for the Project which considers and addresses all Project features. However, Section 5.5 should include a parking study which addresses the Project's parking demands, access to parking lots, and related issues. The DEIR should be revised to address these potentially significant impacts and, if necessary, propose mitigation.

F. Section 5.6: Air Quality.

Without any analysis of hazards and hazardous materials in or around the Project site, the DEIR concludes that the Project will have no impacts on air quality in that the Project will "not result in exposure of sensitive receptors to substantial concentrations of pollutants or generate objectionable odors." DEIR, 5.6-12.

However, without the hazardous materials analysis, this conclusion is difficult to support. As indicated above, the Project is near several areas subject to significant contamination. Such may have migrated to the site. The DEIR should be revised to include an analysis of such materials and pollutants, the air quality analysis should be revised to include and refer to the pollutant analysis, and if necessary, mitigation should be proposed.

G. Section 5.7: Noise.

Section 5.7 addresses potential noise impacts associated with the Project. As indicated in Section 3.1.1 and elsewhere, the Project is partially surrounded by residential neighborhoods. Such are sensitive noise receptors.

Section 5.7.3 recognizes that the Project's heating, air conditioning and ventilation equipment may create minor amounts of noise but concludes that such noise is commonplace. However, the Project's operations will include other non-commonplace noise sources including delivery and trash trucks, employee transportation and other vehicular noise sources not present under the current configuration. The DEIR should be revised to include a noise study of the Project impact on residences including those along 19th St. and West Bay, and 18th St. and West Bay. If necessary, the revised document should propose adequate mitigation measures.

In addition, the Project may attract other noise sources including Charter Boats and Boat Tour operators. Such new sources likely will generate noise sufficient to adversely affect the residential neighborhoods.

Further, Section 5.7.3 indicates that a primary noise source is traffic and that the Project will not be affected by noise from traffic on Balboa Blvd., because the buildings will block noise from Balboa Blvd. However, given this sound barrier, the Project may generate noise from various events which noise may adversely affect neighbors across the bay. Section 5.7 contains no discussion or analysis of such noise generation and impacts. The DEIR should be revised to include such an analysis and, if necessary, propose mitigation.

Section 5.7 shows that noise levels associated with the proposed project will not be significantly higher than they are now except during the construction phase. Since Municipal Noise Codes are formulated in terms of 24-hour average noise levels, it is likely that short term noise impacts may be significant without mitigation. In view of this, we recommend that the DEIR include mitigation measures to ensure that construction companies and crews should be required to use all reasonable care to minimize noise generation by silencing loud equipment when feasible,

avoiding early morning deliveries, controlling construction-site radios, and so forth. These considerations will minimize neighborhood disturbance and potential complaints. Construction companies should be encouraged to build subassemblies off-site when possible.

The supporting noise impact analysis, Appendix G, notes that construction equipment noise will reach 90 dB when operating at full load. This will probably result in exceeding acceptable noise levels at the original or relocated Tot Lot(children's play area) during construction. Mitigation of this effect in the form of sound barriers around the Tot Lot should be required.

H. Section 5.8: Aesthetics.

Section 5.8 concerns the potential aesthetic impacts of the Project. Section 5.8.2 discusses Project impacts including those associated with public views, building heights, and setbacks. Among other things, the DEIR indicates that the Project will enhance public views. However, the DEIR is silent on the manner of enhancement. As indicated above, the DEIR maintains that the Project will create sound barrier so that vehicular noise will not reach Project visitors. Given this feature, it is unclear how the Project will enhance public views but diminish noise from Balboa Blvd.

As indicated above, the DEIR contains some inconsistencies regarding set backs. The computer-generated visual simulations are helpful in illustrating the type of architecture and the overall look of the buildings. However, the simulations appear to have altered the lighting between the before and after condition. For instance, Exhibit 5.8-2 clearly shows the architectural features of the Project in the after condition; the lighting in the before condition makes it impossible to assess what is there.

In addition, there are some inconsistencies with what is being said in the text and what is being illustrated in the simulations; and in some cases, the computer simulations are misleading. In addition, there are inconsistencies within the text. The text on Page 3-5 states that "(t)he maximum height proposed for the two-level villas is 27 feet while the proposed tower will be 34 feet in height." The main lobby will have a height of 34 feet." The text on Page 5.8-2 states that "the hotel will have a maximum height of 24 feet. The main lobby will have a height of 34 feet." However, the computer simulation, Exhibit 5.8-3 shows a tower that appears to be 10 feet taller than the surrounding buildings. Will the main lobby area be 10 feet taller than the other hotel buildings? Considering that the hotel lobby is almost 20,000 square feet, which is nearly 20 percent of the "Total Enclosed Floor Area," Table 3.2-1, Page 3-5, the height and overall scale are not accurately represented in the computer-generated visual simulations.

Also, all of the computer simulations show no overhead utility lines, though such lines exist today. Yet the DEIR contains no discussion of this Project feature. Please confirm that these utilities will be placed underground as a part of the Project

In our comments on the IS/NOP, we stated the DEIR should analyze and address Project related aesthetic impacts to the character of Balboa Blvd., which will be substantially altered by the

volume and mass of the structures that are proposed. The DEIR states that the setback for the proposed Project from Balboa Boulevard is 15 feet. Does this include the main lobby with a height of 34 feet? Again, this is not clear from the computer simulations. However, if that is the case, that volume and mass will have a considerable aesthetic impact on the character of Balboa Boulevard.

Finally, Section 5.8.3 addresses cumulative impacts. It concludes that, because the projects listed in Table 4-1 are remote from the Project, it would not contribute to any cumulative impacts. However, as indicated throughout, additional projects must be considered including the revitalization efforts in the Peninsula. The DEIR should be revised to consider and assess the cumulative impact of the Project together with the efforts to revitalize the area, and if necessary, propose mitigation.

I. Section 5.9: Public Services.

1. Section 5.9.1: Police Services.

Section 5.9.1 concludes that, based upon a discussion with and/or statement from a member of the City's Police Department, the Project will have no significant impact on police services. The DEIR fails to discuss the authorization and position of Lieutenant Klein and his authority regarding manpower and service levels.

Further, in our comments on the IS/NOP, we requested information regarding number of service calls both for the Project as well as the other Project Alternatives. The DEIR contains no such information.

In addition, the City has experienced demands on police services during the summer including on the Fourth of July. The Project may require additional staffing at this time as well as others.

The DEIR should be revised to include the requested information, provide additional information concerning peak demands on police services including the Fourth of July, and, if necessary, provide mitigation, e.g. private security for the Project.

2. Section 5.9.2: Fire Services.

Section 5.9.2 concerning fire services draws a similar conclusion as above for similar reasons: based upon a discussion with and/or statement from a member of the City's Fire Department, the Project will have no significant impact on police services. The DEIR fails to discuss the authorization and position of Mr. Lerch and his authority regarding manpower and service levels.

In addition, Section 5.9.2 observes that:

"[W]ith two fire stations located within one mile of the project site, emergency response time would be adequate."

This may be misleading: we understand that the responding station may not be the closest station. Moreover, staffing at the stations differ: only one of the referenced stations has medical personnel.

In addition, as indicated above, the DEIR does not discuss access and internal circulation. Although the DEIR promises that emergency access roads and resources will be provided, the DEIR contains no plans for such access and resources. The DEIR should be revised to provide this information.

Also, this section states that for fire suppression, "the municipal water supply should be adequate." DEIR, 5.9-3. This statement should be stronger. The DEIR should be revised to include a study of the availability of fire suppression resources to ensure that the water supply will be adequate in the event of a fire.

Both Section 5.9.1 and 5.9.2 indicate that the Project together with others will have no cumulative impacts on these services. However, as indicated above, the DEIR's cumulative impacts analyses for all impacts focuses upon Table 4-1. However, the DEIR's cumulative impacts analysis should also consider the revitalization efforts on the Peninsula to ensure that the Project together with the Table 4-1 projects as well as the revitalization efforts do not have cumulative impacts on various resources including fire and police services.

3. Section 5.9.3: Solid Waste.

Section 5.9.3 addresses solid waste issues. Section 5.9.3 estimates that, in the existing condition, the Project site generates 522.31 pounds per day of solid waste. This section estimates that the Project will generate 403.5 pounds per day. These totals come from Tables 5.9-1 and 5.9-2.

However, the estimate of waste generation for the existing condition seems high. Table 5.9-1 addresses the existing condition and projects that the mobile home park generates 481.6 pounds per day. Although this estimate is based upon State of California estimates that a household generates between 4 and 8.6 pounds per day. Table 5.9-1 uses 8.6 pounds per day.

This is problematic for several reasons. The DEIR fails to explain why the existing condition uses the maximum expected trash generation. Further, the DEIR fails to consider that many residents in the existing condition are only part time residents. Both of these would significantly lessen the estimate of the existing condition.

Also, the projection for the Project seems low and fails to consider the type of solid waste generated by the Project. Much of the waste generated by the Project would include wet kitchen trash which would require more frequent collection. Also, we are unaware of any similar resort or hotel within the City that would generate such a small amount of solid waste.

Section 5.9.3's cumulative impact analysis is likewise inadequate. The section contains no cumulative impact analysis: it merely concludes that the amount of waste would be an incremental contribution and would not be significant.

The DEIR should be revised to study the solid waste generation both for the existing condition and the Project condition, and if necessary, propose mitigation.

4. Section 5.9.4: Water Service.

Section 5.9.4 addresses water supply and service. Its discussion of the existing conditions recognize that Big Canyon Reservoir provides water storage for the City. However, it fails to recognize that this storage is currently out of operation for maintenance and repair.

Further, this section indicates that the Project will require relocation of the existing water main to a different alignment on the site. It concludes that this relocation will have no impacts.

However, without more explanation, this is questionable. Residents, schools and other businesses in the area will suffer during the construction and relocation process. The DEIR fails to recognize this impact and provide mitigation for these short term impacts.

5. Section 5.9.5: Wastewater Service.

Section 5.9.5 addresses waste water issues. Under existing conditions, the site generates a total of 7,093 gallons per day; the Project is proposed to generate more than three times this much: 22,553 gallons per day without any increased capacity to handle the increase flows.

Moreover, the cumulative impacts analysis concludes that the Project together with future development will not create significant impacts. However, given that the Project will significantly increase demands on an aging infrastructure and the cumulative effect of the revitalization efforts on the Peninsula, the DEIR should include a study to insure that capacity and infrastructure are adequate and that the Project will have no significant wastewater impacts.

6. Section 5.9.6: Gas; and Section 5.9.7: Electricity.

Both sections conclude that the Project will have no impact on these services. Both sections recognize that the Project will require twice as much gas and electricity as the existing condition. Moreover, both sections indicate that, even with this doubling together with future development including the revitalization of the Peninsula, the Project will not have cumulative impacts.

The DEIR should be revised to include an analysis of the adequacy of resource supply as well as consider alternative sources, e.g. solar to replace electric consumption. If necessary, the DEIR should propose adequate mitigation.

VII. Section 6: Other CEQA Considerations.

Section 6.1 addresses significant and unavoidable impacts. It concludes that the Project will have no such impacts. As indicated above, Section 5.3 indicates that, even after mitigation, "only one significant unavoidable impact would remain" on benthic resources in or around the Project site. DEIR, 5.3-13. The DEIR should be revised or explained so that this problem is resolved, and the public and decision makers may understand the Project's impacts as well as the need for any additional findings.

Section 6.2 concerns growth inducing impacts. As indicated above, the Project is part of a revitalization effort for the Peninsula. As such, the Project may have growth inducing impacts. As elsewhere in the DEIR, Section 6.2 fails to consider the Project in relation to these revitalization efforts. The DEIR should be revised to consider the Project's growth inducing impacts when considered with these revitalization efforts, and if necessary, propose mitigation.

VIII. Section 7: Alternatives to the Proposed Project.

A. Section 7.1: The No Project Alternative.

Under the No Project Alternative, the existing state is the project alternative. Section 7.1.2 states that the No Project Alternative is the environmentally superior alternative because it maintains the site in its existing condition. Nonetheless, because the No Project Alternative will not meet any Project Objectives, the DEIR concludes that the No Project Alternative is not feasible.

However, Section 7.1 is inadequate. First, the DEIR's analysis of the existing site is inadequate. The DEIR fails to discuss and explain all of the environmental impacts associated with the current use and the existing condition including hazardous materials, water quality, land use, and other issues of the existing condition of the site.

As to the Project Objectives, as indicated above, some of the Project Objectives are problematic: the advancement of economic goals do not seem to be appropriate environmental goals. Further, and more importantly, the DEIR fails to discuss exactly how the Project meets or advances these economic goals.

B. Section 7.2: The Marinapark Marine Recreation Alternative.

Section 7.2.1 discusses the Marine Alternative which includes parkland, land for the Girl Scout Center/Community Center, tennis and basketball courts, over 248 parking spaces, boat moorings and a boat launch.

Section 7.2.2 is the impacts analysis for the Marine Alternative. This section concludes that the Marine Alternative would result in: less impacts than the Project to geology and soils, aesthetics and public services; similar impacts as the Project for land use and planning; and greater impacts

than the Project for hydrology and water quality, biological resources, transportation/circulation, air quality and noise.

However, these conclusion is based upon specific features of the Marine Alternative which could be modified to eliminate such impacts. For instance, Section 7.2.2 notes that the Marine Alternative will have greater water quality impacts, because it would include greater parking areas and impervious surfaces. As discussed above, the DEIR fails to discuss the amount of pervious surfaces for the Project. Moreover, the Marine Alternative could use alternative paving methods for the parking spaces including pervious pavers. Such would lessen any water quality impacts for the Marine Alternative.

Or again, this section indicates that the Marine Alternative will have greater impacts on biological resources, because it would include "larger boat slips and boat launch" than the Project. Again, these features can be changed. Section 7.2.2 recognizes that the Marine Alternative's impacts on biological resources could be mitigated.

As for land use, the DEIR states that both the Project and the Marine Alternative are "compatible with surrounding land uses consistent with the General Plan." DEIR, 7-4. However, the analysis fails to discuss whether the Marine Alternative will require a General Plan Amendment.

The DEIR should be revised to provide more detail and analysis for the Marine Alternative, and reconsider and discuss the evaluation of its environmental rank and its feasibility.

C. Section 7.3: The Reduced Intensity Alternative.

Section 7.3 addresses the Reduced Intensity Alternative which would include an 88 room hotel, a 4,500 square foot restaurant and 12 boat slips. Section 7.3.3 concludes that the Reduced Intensity Alternative would result in greater environmental impacts than the Project. Among other things, Section 7.3.2 concludes that the Reduced Intensity Alternative would have greater transportation and circulation impacts, because it would result in 869 average daily trips as opposed to the Project's 640 average daily trips. However, many of those trips are associated with the large restaurant. A different project feature, e.g. a smaller restaurant and/or parkland, would reduce such trips, perhaps below the Project level.

As before, the Reduced Intensity Alternative fixes on features that may create significant impacts whereas other possible features with fewer impacts are not analyzed. The DEIR should be revised to consider other features for the Reduced Intensity Alternative, and reconsider and discuss the evaluation of its environmental rank.

IX. Miscellaneous Considerations.

We note that the Project in the IS/NOP is entitled the Newport Regent Beach Hotel. The Project for the DEIR is entitled the Marinapark Resort Hotel and Community Plan. The DEIR should explain the change and the proposed Community Plan.

X. Conclusion.

Thank you for the opportunity to comment on the captioned document. For the foregoing reasons, we recommend that the DEIR be revised to address the issues raised above.

ENVIRONMENTAL QUALITY AFFAIRS CITIZENS ADVISORY COMMITTEE

AUTHORIZATION: The Environmental Quality Affairs Citizens Advisory Committee (Committee) established by Resolution No. 87-14, adopted on January 12, 1987; amended by Resolution No. 88-105, adopted October 24, 1988 and blanket Resolution No. 90-123. Committee restructured by adoption of Resolution No. 98-17, adopted on February 23, 1998 (repeals all other resolutions). Membership revised by adoption of Resolution No. 98-60 on August 24, 1998 (amends Res. 98-17). Appointment of officers clarified by adoption of Resolution No. 2000-10 on January 25, 2000. Membership, Rules, and Purpose and Responsibilities revised by adoption of Resolution No. 2000-90 on October 24, 2000. Membership revised by adoption of Resolution No. 2001-61 on July 10, 2001. Revised by adoption of Resolution No. 2001-73 on August 14, 2001. Membership provisions amended by adoption of Resolution No. 2003-18 on March 25, 2003.

- MEMBERSHIP:**
- A. Two (2) Council Members.
 - B. The Chair (or Chair's designee) of the Economic Development Committee.
 - C. Chairperson of Committee shall be a citizen (at large) appointed by the Mayor.
 - D. Seven (7) members, one from each City Council district, nominated by the District Council Member and confirmed by the City Council. If a Council Member chooses, he/she may appoint a person who does not reside in his/her District. If a Council Member does not fill a vacancy within sixty (60) days from the date of the vacancy, the Committee may ~~shall recommend two (2)~~ candidates for the City Council's consideration. Candidates recommended by the Committee need not reside in the District in which there is a vacancy.
 - E. Seven (7) citizens at large, one nominated by each City Council Member and confirmed by the City Council.

At the request of a Council Member, or if a Council Member does not fill a vacancy within sixty (60) days, the Committee may shall recommend any ~~two (2)~~ candidates for the City Council's consideration.

F. Four (4) members who are ~~on the board of directors of~~ active in homeowners or community associations, or any other civic or community groups, appointed by the City Council from ~~two (2)~~ recommendations from the Committee, ~~if any for each member submitted by the~~ Committee.

G. Three (3) members who have knowledge of CEQA administration or environmental issues of concern to Newport Beach (e.g., water quality, airport noise, traffic), appointed by the City Council from ~~two (2)~~ recommendations from the Committee ~~for each member submitted by the~~ Committee.

Staff: Assistant City Manager or Designee

TERM:

District and at-large members shall have terms that coincide with the terms of the Council Members nominating them. Association and special expertise members shall have terms of four (4) years, and may serve no more than two (2) consecutive terms. All members shall serve at the pleasure of the City Council.

RULES:

A. All members, other than Council Members shall have one (1) vote on the committee.

B. The officers of said Committee shall be comprised of a Chairperson and Vice-chairperson. The Chairperson shall be appointed by the Mayor and the Vice-chairperson shall be elected by the Committee.

C. A quorum shall consist of a majority of the currently appointed members of the Committee, not counting the Council Members.

D. If a member is absent from three (3) ~~three (3)~~ consecutive meetings during a twelve month period without an excused absence, the Chair may declare a vacancy and report this vacancy to the Committee and the Council ~~this fact shall be reported to the Mayor. so that replacement of the appointee can be considered.~~

Reports and recommendations from the Committee shall be made to staff, the Planning Commission or the City Council. Committee comments on projects by other agencies shall be distributed to such agencies only after the comments are approved by the City Council, or the City Manager if City Council approval is not practicable.

F. Any publications of the Committee shall require authorization from the City Council.

G. Any letter written by a member of the Committee that represents the position of the Committee, or stating any recommendation made, or action taken by the Committee, shall be authorized by the Committee during a duly noticed public meeting. In the event the Committee has, at a duly noticed public meeting, delegated the responsibility for any task to a Subcommittee, the Subcommittee may authorize one or more of its members to perform that task and subject to the Rules applicable to the Committee, prepare and submit comments and/or state the position of the Committee.

H. The Committee, or a Subcommittee designated by the Committee shall interview each candidate or prospective member before recommending that candidate to the City Council. If the Committee is unable to recommend two candidates for any specific membership, the Committee may recommend, and the City Council may appoint, only one candidate for membership.

**PURPOSE &
RESPONSIBILITIES:**

A. To review and submit comments during the public review period (upon publication of the Notice of Preparation (NOP) and/or the Notice of Completion (NOC) with respect to any Environmental Impact Report (EIR) or other environmental documents prepared by the City that have the potential to have a significant effect on the City of Newport Beach and its residents.

B. ~~To review and, subject to the approval of the City Council or City Manager, submit, on behalf of the City, comments on any NOP or NOC for an EIR prepared by another public agency for a Project that has the potential to cause significant adverse environmental impacts in the~~

~~City of Newport Beach.~~

~~C. If requested by the City Council or the City Manager, review and submit comments on any environmental document, including a Negative Declaration or Environmental Impact Report Statement, prepared by the City or any other other public agency for projects that could have a significant adverse environmental impact on the City of Newport Beach. The Committee may review and submit comments on any negative declaration prepared by the City for any project that is not subject to the review and/or approval of any other Board, Commission or Committee without first receiving a request from the City Council or City Manager.~~

~~CD. To request the City Manager to schedule presentations from City staff relative to activities with the potential to adversely impact the environment and quality of life issues.~~

~~DE. To request the City Manager and/or City Council to schedule a presentation from members of the Committee to the City Council relative to any action of the Committee or any activity that the Committee has determined could have a significant effect on Newport Beach.~~

~~F. To receive, review, and transmit to the City's community associations (COAs) and homeowners associations (HOAs) information relative to projects that have the potential to have a significant adverse impact on the association(s).~~

~~G. To receive the City Manager's weekly newsletter (1 copy).~~

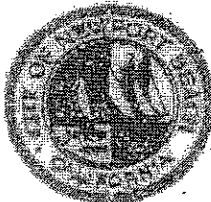
~~H. To recommend to the City Manager subject matter and key questions for inclusion in the City's quarterly newsletter to residents.~~

APPLICATION FOR APPOINTIVE POSITION

FOR OFFICE USE ONLY

Residence District No. _____

Verified by _____



CITY OF NEWPORT BEACH
 8800 Newport Boulevard
 Newport Beach, CA 92666
 City Clerk (949) 644-8005
 Fax (949) 644-8029

DIRECTIONS: One application can be used for all the appointive positions you are applying for. Applications should be filled out completely so that the City Council may fully evaluate your qualifications. It is the responsibility of the applicant to familiarize themselves with the duties and responsibilities of the position(s) applied for. Detailed information outlining the responsibilities of the positions can be obtained from the City Clerk's office or on the City's website www.cityofnewportbeach.org (General Info/Citizen Participation Info). Applications will be kept on file for two years for the position(s) applied for. If you are not selected for appointment during that period of time, it will be necessary for you to re-submit an application if you are still interested in being considered.

NOTICE: Section 705 of the City Charter requires that members of Boards or Commissions appointed by the City Council shall be from the qualified electors of the City. This document is a public record and may be posted on the Internet.

NAME OF BOARD, COMMISSION, OR COMMITTEE: EQAC

Name: Adams, Kristine Ward
 (Last) (First)
 Residence Address (required): 415 SWIFT COURT, APT 3 Zip Code 92663
 How long have you lived in Newport Beach? 4 YEARS Home Phone (949) 642-6222
 Business Address: 3345 LAUREL STREET, APT 207, NB 92663 Business Phone (949) 566-9300
 Email Address: Kristine.Adams@NPI

Have you ever been convicted of any crime or violation of any law or ordinance which would disqualify you from holding office?

Yes _____ No X (If yes, please attach a separate sheet)

| Name and Location of College/University Attended | Major | Degree | Last Year Attended |
|--|-----------|--------|--------------------|
| FSU COL. TAMPA, FL | LAO | J.D. | 1998 |
| NEW COLLEGE, SORASOTA, FL | SOCIOLOGY | B.A. | 1994 |
| | | | |
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| Titles or Current Civic Experiences (Include membership in professional, charity or community organizations) | Office Held (if any) | Dates of Membership |
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| <u>None</u> | | |
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**KRISTINE L.
ADAMS**

3145 Newport Blvd., Suite 207
Redden Peninsula
Newport Beach, California, 92663

(949) 566-9300 Office
(949) 375-3431 Mobile
(949) 566-9333 Facsimile

SUMMARY OF QUALIFICATIONS

APPEALS (STATE APPELLATE COURT) **LITIGATION/ARBITRATION/MEDIATION** **TRANSACTIONAL/CORPORATE COUNSELING**
Business Law; Copyright Infringement; Real Estate; Property Rights; Inverse Condemnation; Construction Defect;
Complex Litigation; Products Liability; Personal Injury; Criminal (Law & Motion); Family (Law & Motion); Unfair Competition;
False Advertising; Contracts Litigation; Malicious Prosecution and Abuse of Process; Intellectual Property/Trade Secrets

Writing

- Law & Motion (including projects as contract attorney)
- Instructor, Legal Research & Writing
- Selected Work: 150 candidates for clerkship at the Florida Supreme Court during third year in law school
- Editor on two law school journals during second and third years in law school
- Internship at Florida trial court in summer of second year in law school
- Research Assistant to Professor in Federal Civil Procedure during first year in law school
- Author (law school): *Made With: Along and California's Dubious "Newsworthiness" Standards*
- Author (Undergraduate): *A Study in the Production, Signification, and Consumption of Reality TV*
- News Release Writer for Southern Oregon State University
- Features Writer for Oregon regional arts magazine

Licensure and Memberships

- State Bar of California (passed exam on first attempt and scored into Minnesota and Washington D.C.); U.S. District Court, Central District of California; U.S. Court of Appeals, Ninth Circuit
- Federal Bar Association; American Bar Association; Orange County Bar Association

EDUCATION AND EDUCATIONAL ACTIVITIES

LAW SCHOOL:

J.D., FLORIDA STATE UNIVERSITY COLLEGE OF LAW

DECEMBER 1999

- Award: Top Grade in Entertainment Law
- Dean's List
- Recipient of five (5) scholarships
- Article & Notes Editor: *Journal of Land Use and Environmental Law*
- Articles & Notes Editor and Selections Committee Member: *Journal of Transnational Law and Policy*
- Summer Program in Law at Oxford University in Oxford, England
- President: American Civil Liberties Union, Florida State University College of Law Chapter (2L)
- Chief Technology Officer: Law and Technology Association (1L)
- Treasurer: American Civil Liberties Union, Florida State University College of Law Chapter (1L)

UNDERGRADUATE:

B.A., SOCIOLOGY, NEW COLLEGE OF FLORIDA (HONORS COLLEGE)

MAY 1994

- Leonard S. Florenheim, Sr. Endowed Scholarship
- New College Foundation Research Grant
- Writer for *The Mirror* (journal of political and social commentary)
- Sub-major in Mass Media & Popular Culture

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EMPLOYMENT/EXPERIENCE

Work History

• 2001-Present: Solo Practice

General civil practice: property rights protection; litigation against public entities; inverse condemnation; construction defect litigation; state and federal regulatory compliance; business litigation; actions on contract/breach; unfair competition; false advertising; copyright infringement (support for colleague); transactional and corporate counseling.

• 2001-2002: Instructor, Legal Research & Writing (Winter Law School)

Lectures and instruction to first-year class; Civil arguments; appellate briefs; objective memoranda; legal research, writing, and analysis.

• 2000-2001: Law Clerk (simultaneous work for various solo practitioners in Orange County)

Entertainment Law: research and memoranda in plaintiff's copyright infringement action.

All Other Areas: litigation support; research; discovery; pre-trial and trial motions; arbitration briefs; legal memoranda; client consultation and correspondence; pleadings.

• 1998-1999: Florida Supreme Court, Judicial Clerk to the Honorable Justice Leander L. Shaw

Authored determinations of jurisdiction and made recommendations to the panel; authored legal memoranda on extraordinary writ petitions and rehearing motions; discussed legal analysis and recommendations with Justice Shaw; attended oral arguments.

• Summer 1998: 12th Judicial Circuit of Florida, Law Clerk to the Honorable Andy Owens, Chief Judge

Authored court orders on post-conviction appeals; memoranda on family and child law issues; and memoranda on findings and evidence on civil law; testified and guided Special Master supervision of document production in civil case; Special Master reports to the court.

• 1997-1998: Research Associate to Professor Paul Amino, Children's Advocacy Center

Mounted standing challenge to Federal DOT final rule on aircraft boarding assistance for passengers with disabilities; drafted public records requests and weekly memoranda; researched and analyzed relevant statutes, legislative history, case law.

• 1996-1997: Research Assistant to Professor Larry George, Florida State University

Designed and programmed interactive course material; research assistance in federal civil procedure.

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